Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition	)	WT Docket No. 11-186
	)	

COMMENTS OF RCA – THE COMPETITIVE CARRIERS ASSOCIATION

RCA—The Competitive Carriers Association ("RCA") submits updated comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice seeking updated information for its Sixteenth Annual Report on the State of Competition in Mobile Wireless, including Commercial Mobile Radio Services ("Competition Report").[1] In its initial comments, RCA described how the competitive landscape is becoming a de facto duopoly.[2] AT&T and Verizon continue to foreclose competition by restricting access to the vital inputs required for mobile broadband service including spectrum, devices, commercially reasonable roaming arrangements, and economical special access rates. By using their market power to block access to these critical inputs, the largest two carriers are limiting the deployment of next-generation services to American consumers, particularly those located in rural and regional areas.

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1 *Wireless Telecommunications Bureau Seeks Updated, Year-End 2011 Data For its Sixteenth Report on Mobile Wireless Competition*, WT Docket No. 11-186, Public Notice, DA 12-405 (Mar. 14, 2012).

2 Comments of RCA—The Competitive Carriers Association, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 11-186 (filed Dec. 5, 2011) ("RCA Comments").

Much has changed since RCA filed its initial Competition Report comments. AT&T withdrew its ill-conceived proposal to acquire T-Mobile USA and Congress gave the FCC incentive auction authority, preserving the FCC's right to promote competition and prevent excessive spectrum aggregation. But these pro-competitive measures have been over-shadowed by other anticompetitive actions. Cox joined the proposed Verizon-SpectrumCo deal (collectively the "Verizon-cable" deals), potentially adding another 152 AWS licenses to Verizon's spectrum warehouse. The FCC approved AT&T's acquisition of Qualcomm's 700 MHz holdings, adding even more spectrum to AT&T's 700 MHz 4G LTE holdings. The FCC has proposed to revoke LightSquared's conditional waiver and Ancillary Terrestrial Component ("ATC") authority. The National Telecommunications and Information Administration ("NTIA") released its long awaited report on the 1755-1850 MHz spectrum with mixed prospects for the future of that spectrum. While AT&T and Verizon continue to deploy 4G LTE in urban America, the continued lack of interoperability and inability to negotiate commercially reasonable 4G roaming agreements has further frustrated competitive carriers' ability to enter the LTE market. All of these events have exacerbated the competitive challenges in the current mobile market.

I. THE WIRELESS INDUSTRY IS HIGHLY CONCENTRATED AND CREEPS CLOSER TO A *DE FACTO* DUOPOLY

As the Commission has recognized, in the past decade, the wireless industry has experienced a significant increase in concentration.[3] In its most recent Competition Report comments, RCA stated that this concentration empowered and emboldened AT&T and Verizon to employ a variety of practices that limit effective competition. RCA noted its opposition to the

[3] *See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, WT Docket No. 10-133, ¶ 2 (June 27, 2011).

proposed Verizon-SpectrumCo transaction and urged the Commission to address the competitive concerns raised by the deal. Since that time, the Verizon-SpectrumCo deal has grown to also include the transfer of Cox's AWS licenses to Verizon raising the total purchase price to $3.9 billion.

In February, RCA filed its Petition to Condition or Otherwise Deny, in which it outlined conditions that would ameliorate the competitive harms stemming from the license transfers.[4] By imposing significant spectrum divestitures to operating competitors, strict roaming conditions, interoperability requirements addressing both the AWS and 700 MHz bands, and conditions to ensure access to competitive backhaul, the Commission could address some of the fundamental concerns that have plagued competitive carriers in recent years. These transactions will exacerbate access to these critical inputs and the conditions proposed by RCA provide competitive carriers some regulatory and financial certainty to compete with the Twin Bells.

II. INCREASED CONCENTRATION IS CREATING ANTICOMPETITIVE SPECTRUM AGGREGATION THAT ENABLES THE LARGEST CARRIERS TO CONTINUE TO FORECLOSE COMPETITION

The impending industry transition to LTE and consumer demand for ever more data-intensive devices make spectrum more valuable than ever. While all carriers seek more spectrum, AT&T's and Verizon's warehousing of spectrum becomes even more worrisome for competitors as several alternative sources of spectrum highlighted in the National Broadband Plan[5] have been taken off the table for near-term deployment.

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4 Petition to Condition or Otherwise Deny Transactions of RCA—The Competitive Carriers Association, *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses*, WT Docket No. 12-4 (filed Feb. 21, 2012) ("RCA Petition").

5 National Broadband Plan at 84.

Multiple sources of spectrum that the FCC hoped to make available[6] for mobile broadband will not likely be available for deployment in the near future. The FCC previously identified the 1755-1850 MHz spectrum band, currently being used by the Federal government, as ripe for reallocation. Based on a recent report by NTIA,[7] this spectrum will not be immediately available for reallocation due to alleged challenges and costs to relocate the government users. LightSquared is currently fighting to save its authority. The FCC has proposed to revoke the company's conditional waiver and suspend its underlying ATC authorization amid reports of potential interference to the GPS industry.[8] In doing this, the FCC has foreclosed for competitive carriers an opportunity to partner with a wholesale provider for access to additional 4G broadband spectrum. And while Congress has provided the FCC with authority to conduct incentive auctions of broadcast spectrum, it remains to be seen how much spectrum will become available for mobile broadband deployment. Each of these recent developments underscores the importance of full and efficient use of spectrum currently available for mobile broadband.

Spectrum warehousing remains a serious threat to 4G mobile broadband deployment, and could be further exacerbated by the Verizon-cable deals. If approved, Verizon—already averaging 88 MHz of spectrum nationally—will hold 40 MHz of unused AWS and 700 MHz spectrum in most top 100 markets, with up to 72 MHz of fallow spectrum in several of those

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6 *Id*.

7 Letter of Lawrence E. Strickling, Assistant Sec'y for Commc'ns & Info. & Adm'r, Nat'l Telecomm.s & Info. Admin., to Julius Genachowski, Chairman, Fed. Commc'ns Comm'n (Feb. 14, 2012); *International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver*, Public Notice, IB Docket No. 11-109, DA 12-214 (released Feb. 15, 2012).

8 Public Notice, *International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver*, DA 12-214, IB Docket No. 11-109 (released Feb. 15, 2012).

markets.[9] Verizon itself has indicated it does not have a near-term need for this spectrum.[10] The "foreclosure premium" effect on spectrum for super carriers like Verizon is well-illustrated here.

If Verizon truly needed additional spectrum to increase capacity and continue to deploy LTE, it should use spectrum in its own warehouse before acquiring spectrum from potential competitors. By acquiring the cable companies' AWS spectrum, Verizon seeks to add an additional $3.9 billion worth of spectrum to its warehouse, while it sits on 20 MHz of AWS spectrum covering the eastern half of the United States and nearly $5 billion of prime, Lower 700 MHz spectrum remains unused. By failing to develop the Lower 700 MHz band spectrum, Verizon has put this finite spectrum resource on the shelf, voluntarily for itself, but worse, involuntarily for all other Lower 700 MHz A block licensees. This decision not to deploy is preventing Lower 700 MHz A block licensees from accessing an equipment ecosystem with the necessary scope and scale to make deployment and service economically feasible. Spectrum warehousing cannot stand, especially when all carriers need additional spectrum to keep up with customers' data demands.

The FCC must appropriately weigh the impact of further spectrum aggregation by the two largest carriers with the need for robust countermeasures to ensure a competitive balance in the marketplace. The current spectrum screen is broken as it does not adequately address spectrum aggregation. The FCC must revise the screen to reflect market realities during each transaction review.

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9 RCA Petition at 4, 21.

10 RCA Petition at 20. Verizon has stated that it "has sufficient spectrum to meet its immediate needs, and generally to meet increased demands until 2015." SpectrumCo Public Interest Statement at 13.

III. INDUSTRY CONCENTRATION HAS IMPAIRED DEVICE INTEROPERABILITY, HAS HINDERED DEPLOYMENT IN THE 700 MHZ BAND, AND THREATENS TO DELAY DEPLOYMENT IN AWS

In its initial comments, RCA detailed how device exclusivity and non-interoperability have combined to present a significant roadblock to competitive carrier rollout of 4G services. As described below, continued lack of interoperability worsens the competitive harms as time passes.

With its recently released Interoperability Notice of Proposed Rulemaking ("NPRM"),[11] the FCC took a much-needed step toward ending the anticompetitive bifurcation of the paired Lower 700 MHz spectrum. Unfortunately, the NPRM does not provide immediate relief and a timeline for resolution remains uncertain. Competitive carriers are forced to wait on the sidelines as Verizon and AT&T pad their already substantial lead in LTE deployment.

LTE is the fastest developing mobile communications system technology,[12] and by some estimates, is expected to reach over 320 million subscribers by 2015.[13] According to the Global mobile Suppliers Association, LTE devices available on the market have increased by 76 percent since October 2011, which amounts to approximately 150 new LTE devices.[14] And the number of LTE smartphones has grown 33 percent since January 2012.[15] LTE smartphones are now

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11 *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69 (rel. Mar. 21, 2012).

12 Press Release, GSA, GSA Confirms LTE as the Fastest Developing System in the History of Mobile Telecommunications, 180 Operators Now Investing (Jan. 12, 2011).

13 Infonetics Research.

14 GSA, Status of the LTE Ecosystem report, Oct. 28, 2011.

15 GSA, Status of the LTE Ecosystem report, Jan. 20, 2012.

being sold for less than $100.[16] As the LTE smartphone moves away from "super-premium" status, consumers' expectations will adjust. Even non-national carriers will be expected to offer full-featured LTE smartphones. Whereas prior arguments against interoperability by the duopolists hinged on the issue of cost, the plummeting overall price of these devices—especially when coupled with increased consumer uptake and the ensuing effect on per-unit cost—invalidate their opposition. Further, the cost of technical upgrades to transition to an interoperable Lower 700 MHz band, for example, is negligible.[17]

The above discussion proves that interoperability can, and should, be implemented now. Currently, Verizon boasts 203 LTE markets and 22 LTE devices. AT&T currently has 32 LTE markets and offers 12 LTE devices. But because of the artificial band class segregation of the Lower 700 MHz band, competitive carriers have largely been unable to move forward on their own LTE plans. A handful of RCA member companies have rolled out LTE services. MetroPCS has three LTE devices while U.S. Cellular unveiled its first LTE smartphone just last week. Competitive carriers on the whole, however, will continue to lag behind their national counterparts if the Commission does not act now to end non-interoperability in the Lower 700 MHz band, and in the future, remain vigilant to similar power plays by the duopolists.

If approved as proposed, the Verizon-cable deals will further diminish the buying power of competitive carriers. This removal of four potential competitors effectively transfers their collective buying power to Verizon, which already boasts a disproportionate share of industry

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16 Matt Hamblen, *It's Raining Sub-$100 LTE Smartphones*, Network World, Apr. 5, 2012, http://www.networkworld.com/news/2012/040512-it39s-raining-sub-100-lte-257999.html?source=NWWNLE_nlt_wireless_2012-04-09.

17 This is supported by the findings of Vulcan Wireless, which found that total additional device costs to accommodate 700 MHz blocks A, B, and C would likely equal less than one dollar. *Ex Parte* Letter from Mark W. Brennan, Counsel to Vulcan Wireless LLC, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 11-18; RM-11592 (Nov. 25, 2011).

buying power. Further, increasing Verizon's AWS spectrum holdings raises the risk that Verizon will create a "private" band class for its AWS spectrum, like what happened in the 700 MHz spectrum band. If all of Verizon's pending AWS spectrum acquisitions are approved as proposed, 95 percent of Verizon's total AWS spectrum will be in AWS blocks B and F, two of the only three AWS blocks with a 20 MHz bandwidth. By comparison, AT&T created a boutique band class for two blocks of spectrum in the 700 MHz band when just 70 percent of its 700 MHz band spectrum was located in those two blocks. Verizon could implement the same anticompetitive practice and create a new band class unique to Verizon's AWS spectrum and compel manufacturers to build devices only for the Verizon band class rather than the entire AWS band. This is an unacceptable outcome. Non-interoperability must not plague other spectrum bands like it has the 700 MHz spectrum band.

IV. INCREASED INDUSTRY CONCENTRATION MAKES IT MORE CHALLENGING FOR COMPETITIVE CARRIERS TO SECURE ROAMING ARRANGEMENTS ON COMMERCIALLY REASONABLE TERMS AND CONDITIONS

Inability to secure roaming contracts is a long-standing concern of competitive carriers, and as RCA noted in its initial comments, "[a]s industry concentration increases, so does the ability and incentive of the super carriers to deny nationwide roaming on commercially reasonable terms and conditions."[18] The proposed Verizon-cable deals will further exacerbate roaming concerns as they will eliminate potential competitors that would have a strong interest in ensuring commercially reasonable roaming arrangements and serve as important roaming partners.

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18 RCA Comments at 16.

RCA member companies continue to struggle to obtain commercially reasonable roaming rates despite the FCC's Data Roaming Order.[19] Although the cable companies will not enter the wireless market as facilities-based providers, they will indeed enter the market as agents to and eventually as mobile virtual network operators of Verizon Wireless. This will only exacerbate the dominant control exercised by Verizon Wireless. Even the cable companies cited the need for commercially reasonable roaming agreements as a significant reason to abandon plans to enter the wireless market as facilities based carriers.[20] The Commission must strongly consider the use of strict roaming conditions.

V. THE COMMISSION SHOULD IMPROVE ITS OVERSIGHT OF SPECIAL ACCESS SERVICES TO ENSURE THAT BACKHAUL IS AVAILABLE TO COMPETITIVE CARRIERS AT JUST AND REASONABLE PRICES

In its initial comments, RCA called on the FCC to move forward with special access reform, citing anticompetitive practices within the special access market. Like roaming, the Verizon–cable deals will exacerbate competitive harms already present in the special access market. In the past, the cable companies were viewed as an important alternative source for backhaul service. In fact, backhaul services have been lucrative for the cable companies.[21] The joint agreements that are integrated with the transactions involve significant cooperation at best

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[19] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 15 (2011).

[20] "Cox Communications to Discontinue Cox Wireless Service, Effective March 30, 2012," Press Release, Cox Communications, (Nov. 15, 2011), available at http://cox.mediaroom.com/index.php?s=43&item=569; Letter from Robert G. Kidwell, Counsel to Bright House Networks, LLC, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 12-4 (Mar. 22, 2012).

[21] Time Warner Cable, Time Warner Cable Reports 2011 Fourth-Quarter and Full-Year Results, Jan. 26, 2012, at 2, http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTI0MTA4fENoaWxkSUQ9LTF8VHlwZT0z&t=1.

(and agreements to not compete, at worst) between the two major wireline providers in significant areas of the country. The Commission must make sure that access to this critical input is not limited pursuant to this new found cooperation between prior competitors. RCA reiterates its call for special access pricing reform.

VI. CONCLUSION

With the wireless industry at a critical juncture, the Commission should utilize its analysis of competition to guide its policy-making to restore competition to the marketplace. Based on recent developments, consolidation and spectrum aggregation concerns have worsened, to the detriment of competitive carriers, and ultimately consumers. The Commission should use its latest analysis of wireless competition as a basis to develop and implement pro-competitive, pro-consumer policies that reduce concentration, restore competition, and ensure that competitive carriers have a level playing field to compete with AT&T and Verizon.

Respectfully submitted,

/s/

Rebecca Murphy Thompson
RCA – The Competitive Carriers Association
805 15th Street NW, Suite 401
Washington, DC 20005
(202) 449-9866

April 13, 2012